

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division
Case No.: 09-CvS-01434**

THOMAS A. ALLEN,

Plaintiff,

vs.

JOHN MARLIN DANCE,

Defendant.

NOTICE OF REMOVAL

*(Union County Superior Court
09-CvS-01434)*

The Defendant, John Marlin Dance (“Dance”) hereby gives notice of the removal of the above-captioned matter pending in the General Court of Justice, Superior Court Division, County of Union, State of North Carolina, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, to the United States District Court for the Western District of North Carolina and as grounds for removal states:

1. Thomas A Allen Files State Court Action: On April 9, 2009, Plaintiff ("Allen") filed a Complaint in that certain action captioned *Thomas A Allen vs. John Marlin Dance*, Case No. 09-CvS–01434, in the General Court of Justice, Superior Court Division, County of Union, State of North Carolina. Copies of the summons and Complaint (the "Complaint") are attached hereto as **Exhibit A.**

2. Service on John Marlin Dance: Dance received a copy of the Summons and Complaint on April 14, 2009. No other process, pleadings or orders have been served on Dance or filed in the state court action other than the Summons and Complaint attached hereto. Dance has not responded to the Complaint in state court.

3. Allen Action Is Removable: Removal is authorized by 28 U.S.C. §1441(a) and 28 U.S.C. §1332(a)(1). This Court has original jurisdiction under 28 U.S.C. § 1332(a)(1) on grounds of diversity because this is a civil action where the matter in

controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs and is between citizens of different states.

a. Diversity of Citizenship: Allen is a citizen of state of North Carolina See Complaint ¶ 1. Dance is a citizen of Virginia by virtue of the fact that Defendant is a residence of Virginia. See Complaint ¶ 2.

b. Amount in Controversy: Allen has asserted claims against Dance based upon slander and alienation of affections. Allen demands damages in excess of \$10,000.00. See Complaint ¶¶ 17, 19.

4. Removal to Proper Court: This is the proper court for removal specified by 28 U.S.C. §1446(a) because it is the district court of the United States for "the district and division within which" Allen filed its action.

5. Timeliness of Removal: This Notice of Removal is timely pursuant to 28 U.S.C. §1446(b) because it has been filed within thirty (30) days after Dance's receipt of the Complaint which was "the initial pleading setting forth the claim for relief . . . " on April 14, 2009.

6. Notice of Removal: A copy of this Notice of Removal is being filed with the Clerk of the Court of the General Court of Justice, Superior Court Division, County of Union, State of North Carolina and being served on Allen pursuant to 28 U.S.C. § 1446(d).

This the 11th day of May 2009.

TEMPLETON & RAYNOR, P.A.

/s/Carrie H. O'Brien
Carrie H. O'Brien
(Attorney for Defendant John Marlin Dance)
1800 East Boulevard
Charlotte, NC 28203
Phone 704.344.8500; Fax 704.344.8555
N.C. Bar No.: 27643

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and I hereby certify that I have mailed the document to the following non-CM/ECF participants:

Mr. Christopher D. Johnson
Suite DD - 518
800 Briar Creek Road
Charlotte NC 28205
(Represents Thomas A. Allen)

This the 11th day of May 2009.

/s/Carrie O'Brien

Carrie O'Brien
TEMPLETON & RAYNOR, P.A.